

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN ROYAL JOHNSON**, on January 28, 2003 at 3:00 P.M., in Room 317-C Capitol.

**ROLL CALL**

**Members Present:**

Sen. Royal Johnson, Chairman (R)  
Sen. Corey Stapleton, Vice Chairman (R)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Gary L. Perry (R)  
Sen. Don Ryan (D)  
Sen. Emily Stonington (D)  
Sen. Bob Story Jr. (R)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Services Division  
Marion Mood, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 220, 1/24/2003;  
SB 234, 1/24/2003

Executive Action: SB 173; SB 215; SB 219

**HEARING ON SB 220**

**Sponsor:** SEN. FRED THOMAS, SD 31, STEVENSVILLE

**Proponents:** Bob Rowe, Public Service Commission (PSC)

**Opponents:**           None

**Opening Statement by Sponsor:**

**SEN. FRED THOMAS, SD 31, STEVENSVILLE**, stated he submitted SB 220 after it had come to light that the PSC districts had not been redistricted by population since the commission's creation nor was such a provision written in Montana's Constitution or in statute. He submitted **EXHIBIT(ens18a01)**, data for the current districts as well as two options for the proposed redistricting. He went over the deviation percentage for the five districts shown, saying SB 220 would serve to make the population shifts more equitable. He had **Susan Fox, Legislative Services**, prepare maps to illustrate Options C and C-2, **EXHIBIT(ens18a02)** and **EXHIBIT(ens18a03)**. He explained that originally, he had come up with four different options, but ultimately, the bill was drafted to incorporate Option C because it had the closest net deviation percentages. He assured the committee that county boundaries were kept intact as well. Out of a meeting with members of the Public Service Commission came Option C-2 which shows Lake County moving into District 5 and Lincoln County into District 4. The sponsor endorsed these changes without reservation. Amendment SB022001.asb, **EXHIBIT(ens18a04)**, was introduced as an amendment necessary to incorporate C-2 into the bill.

**Proponents' Testimony:**

**Bob Rowe, PSC**, submitted written testimony, **EXHIBIT(ens18a05)**.

**Questions from Committee Members and Responses:**

**SEN. BEA McCARTHY, SD 29, ANACONDA**, asked if the sponsor had a map depicting the current districts and was advised that the red lines in the map before her indicated the old boundaries.

**SEN. KEN TOOLE, SD 27, HELENA**, was curious whether the sponsor had at all considered how the redistricting would affect regulated electric supply customers versus unregulated co-op customers. **SEN. THOMAS** replied that the only criteria used were deviation percentages and keeping counties intact.

**SEN. TOOLE** then posed the same question to **Commissioner Rowe** because he felt these were fairly dramatic shifts in terms of regulated utility customers and co-op customers, particularly in Districts 3 and 5. **Commissioner Rowe** felt that this was not a powerful constitutional issue as in "one person, one vote"; secondly, he felt it would be too difficult to try and factor this in because at issue were both telecommunications and utilities, and these did not necessarily coincide. He pointed to

Centurytel serving both Flathead and Lake Counties which might be combined in District 5. **SEN. TOOLE** then voiced concern over taking Cascade County into District 1, and combining Lewis & Clark with Flathead County because it would dilute a block of voters concerned with electric distribution rates. **Chairman Rowe** thought the District 5 configuration could potentially be contentious but he did not see a better way to draw its boundaries than what had been done. **SEN. TOOLE** wondered if county lines had to be followed. **Commissioner Rowe** responded it was not necessary but that the Public Service Commission supported following county lines because then they knew who was in charge, i.e., the County Commissioner. **SEN. TOOLE** again brought up the breakdown between regulated versus unregulated utility customers and asked if **Commissioner Rowe** could establish this based on his information regarding the five districts. **Commissioner Rowe** assured him this could be done with the help of the legislative staff.

**Closing by Sponsor:**

**SEN. THOMAS** closed on SB 220, saying it was ultimately up to the committee to redraw the boundaries.

**HEARING ON SB 234**

**Sponsor:** **SEN. JOHN COBB, SD 25, AUGUSTA**

**Proponents:** **Bob Rowe, Public Service Commission (PSC)**  
**Bob Nelson, Montana Consumer Council**  
**John Bushnell, Northwest Power Planning Council,**  
**Governor's Office**  
**Tom Schneider, PSC, self**

**Opponents:** **John Alke, Montana-Dakota Utility (MDU)**  
**Mike Strand, Montana Independent Telecom Systems**  
**Geoff Feiss, MT Telecommunications Assn.**  
**Rick Hays, Qwest**  
**John Fitzpatrick, NorthWestern Energy**

**Opening Statement by Sponsor:**

**SEN. JOHN COBB, SD 25, AUGUSTA**, opened by saying SB 234 clarifies the Public Service Commission's authority to approve, disprove or modify the acquisition or transfer of regulated public utilities, or public utilities' property, to ensure public interest will not be adversely affected and nor should it diminish the utility's ability to provide reasonable and adequate services at just and

reasonable rates. He explained some of the bill's provisions and confirmed that SB 234 would put in statute the PSC's power to review these transactions whereas currently, the commission merely asserts its ability to review significant transactions involving regulated property.

**Proponents' Testimony:**

**Bob Rowe, PSC**, submitted written testimony, **EXHIBIT(ens18a06)**.

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**Bob Nelson, Montana Consumer Council**, rose in support of SB 234 because it clarified the commission's consumer protection and public interest function, namely ensuring adequate service at just and reasonable rates. In his opinion, the PSC has the power and the obligation to conduct this kind of review. He agreed with **Commissioner Rowe's** statement that the utilities have consistently challenged this authority and stressed that by adopting SB 234, it would be statutory. **Mr. Nelson** informed the committee that he had heard of certain proposed amendments which would limit the review and take out certain types of transactions. He was willing to listen to and work with the parties to develop something acceptable to everyone affected by these provisions.

**John Bushnell, Northwest Power Planning Council, and on behalf of the Governor's Office**, urged the committee to thoroughly examine SB 234 because of its importance and review it in light of **Mr. Nelson's** comments.

**Tom Schneider, PSC**, testifying in his own behalf, lauded the sponsor's efforts to clarify Montana's public utility law in a way that was fundamental to consumer protection. He affirmed that it was designed to give explicit authority and responsibility to the PSC to protect the public interest in public utility transactions. Recent corporate actions in Montana illustrated the risk and cost to Montana's economy, and he felt it imperative that the PSC evaluate and act upon these complex transactions involving regulated utilities to ensure that both consumers and emerging competitive markets are fairly protected, preserved, and enhanced. He was adamant that a solid regulatory framework was good for consumers as well as for competition. In closing, he offered the commission's help in crafting legislation that would not compromise the principles the sponsor presented in his bill.

**Opponents' Testimony:**

**John Alke, Montana-Dakota Utility (MDU)**, reminded the committee that a similar bill was heard and rejected in 2001. He stressed that the breadth of this bill was too great, vesting in the commission powers far beyond what it needs in order to exercise its authority as a rate and service regulator. In his opinion, the PSC did not have the authority it has claimed all this time. He explained that Montana was unique in that it does not have a certificate system. In most states, if a utility wants to go into business, it has to get a certificate from the regulator, and that certificate vests in it both an obligation and a right to exclusively serve that territory. He submitted

**EXHIBIT (ens18a07)** and **EXHIBIT (ens18a08)**, and quoted from the latter that in 1948, the commission specifically ruled it did not have jurisdiction over the sale or transfer of utilities, and he affirmed there had been no change in the law concerning this issue. He did say, however, that with numerous bills, legislators had tried to vest this power in the PSC, giving it the ultimate authority over sales and transfers of utilities. He further stated SB 234 was not necessary to protect the ratepayers from potentially adverse impacts because under public utility rate-making law, the acquiring utility did not have the right to have its purchase price reflected in rates but must use the selling utility's original cost appreciated as its rate base. The purchasing utility is required to record the difference between value and purchase price as an "acquisition adjustment" and is prohibited from reflecting this difference in rates unless the commission so rules. As an example of how public utility law works, he used the PacifiCorp case, informing the committee that MDU, Montana Power and the cooperatives all were interested in purchasing PacifiCorp. In the end, the cooperatives were able to buy it because the principles of public utility rate-making do not apply to them; the regulated utilities could not bid an amount equal to the co-op's because in order to recoup their investment, they would have had to make an extraordinary showing to the PSC to have the difference between cost appreciated and the higher purchase price reflected in rates. He was adamant that this bill would also allow a spurned bidder to argue that a sale was not in the best public interest and the commission should find that he should be the buyer. To further illustrate MDU's opposition to SB 234, he pointed to Section 2, subsection (a) and explained that MDU's electric and gas operations are merely a fraction of the entire company; and only 3% of MDU Resources Group, Inc.'s operating profits are derived from its utility operation as it pertains to its Montana holdings. Despite the fact that 97% of the company does not fall under the jurisdiction of the PSC, in order to comply with federal law, MDU as a whole is viewed as a public utility and therefore, should it desire an acquisition or transfer, its respective agreements could be rewritten by the Montana PSC. In closing, he advocated consideration of

EXHIBIT (7), an alternative bill version he had drafted, if the sponsor's concern was giving the PSC the power to weed out unfit buyers and to ensure the ratepayers' interest would not be adversely affected by a proposed purchase of a utility.

**Mike Strand, Montana Independent Telecommunications Systems,** while allowing that the PSC could approve or disapprove the terms of a contract, also stated that his organization did not deem it appropriate for the PSC to dictate the terms of a deal to the concerned parties. He offered an amendment, **EXHIBIT (ens18a09)** without which he would totally oppose SB 234. He repeated **Mr. Alke's** concern that SB 234 did not limit itself to utility property located in Montana. Another stipulation, page 1, line 26, states that property may not be leased to or from others without commission approval, and this directly affected many of his organization's members who lease telecommunication circuits or fiber optic capacity in their efforts to provide service to their customers. He stated most of this activity was with respect to data services which the commission does not regulate, and he failed to understand why the commission should be able to approve or disapprove leases as well. He claimed the language of the bill forced the commission to literally look at every single transaction so it could determine whether the property involved was necessary or useful in providing utility service to the public; only then could it determine whether to approve, disapprove, modify or condition a transaction. Lastly, he expressed disbelief at the fiscal note which showed zero impact, saying it would be impossible for the commission to review every transaction regulated utilities engage in without any additional staff.

**Geoff Feiss, Montana Telecommunications Association,** agreed with previous testimony and cautioned the bill as written was subject to extremely broad interpretation and potentially could allow commission intervention in any transaction related to utility service. He stated that he would favor an amendment clarifying under which circumstances a review by the PSC was appropriate.

**Rick Hays, Qwest,** while also agreeing with previous opponents' testimony, wanted to make it clear that Qwest opposed SB 234 because it attempted to regulate transactions which have nothing to do with providing services to Montanans; it did not apply to all providers; every sale transaction regardless of size would be subject to the PSC's review and scrutiny which would drive up costs; and lastly, he felt the bill was not necessary, explaining that Qwest, for one, had always sought the commission's approval for its transactions within the state and would continue to do so in the future. He felt this broad-based statutory scheme held no consumer benefits; on the contrary, it would lead to higher

costs. He also cautioned that time delays caused by this bill could have unintended consequences for all involved.

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He talked about Qwest's sale of its "Yellow Pages" last year which was done in an effort to improve the bottom line of its parent company, QCI, an entity not regulated by the PSC. He stated that this transaction, as most corporate transactions would be, was highly time-sensitive because of the built-in walk-away clause, plus, in the eyes of the seller, a mandatory regulatory review would have diminished the price because of the time delay and the uncertainty, thus harming the seller and his customers. This sale was not subject to the regulatory review, so the first phase has been completed and closed. He stressed that regulatory uncertainty was challenging because the company sells assets based on assumptions regarding those sales and an anticipated closing and expects to receive its proceeds by a certain date. A delay might force renegotiation or cause a deal to fail altogether; this would have been problematic in the aforementioned example because the sale was critical in keeping the company from having to file for bankruptcy. Lastly, he pointed out that SB 234 attempted to replace a company's Board of Directors or shareholders with the views of the Montana PSC, and it should not be the PSC's role to manage the companies it regulates.

**John Fitzpatrick, NorthWestern Energy**, stated that public utility regulation meant balancing public interest, represented by the ratepayers, and business interest, represented by the shareholders. This bill upsets that balance by vastly overreaching its boundaries in that it injects itself into the management and daily operations of a company. He felt SB 234 was unnecessary as the PSC had already involved itself in the sale of Montana Power Company's assets as well as the sale of the gas and electric transmission distribution assets, where it did realize substantial benefits for the consumers. In his opinion, the lack of specific deadlines made it open-ended and effectively took companies out of the equation, and he urged the committee to consider **Mr. Alke's** bill draft.

**Questions from Committee Members and Responses:**

**SEN. EMILY STONINGTON, SD 15, BOZEMAN**, wondered whether there had been a Supreme Court decision with regard to the authority the commission asserted it had. **Commissioner Rowe** replied that there had not, and he felt this was for the Legislature to decide. **SEN. STONINGTON** then asked for his interpretation of the

language in SB 234 which **Mr. Alke** claimed gave the PSC authority to approve or disapprove MDU's entire sale even though only 3% of its ownership is in Montana. **Commissioner Rowe** explained that if utility property was out-of-state, the Legislature could not confer jurisdiction; the proper practice was for states within a region to coordinate their review with regards to being on the same time schedule and so on. Secondly, MDU is a unified company rather than a conglomeration of utility affiliates and other businesses. He maintained that the focus of the commission review should be on those things which have a material effect on rates and service. **SEN. STONINGTON** sought his response to the claim that SB 234 was not necessary because currently, purchasing companies were not able to reflect sales price in rates.

**Commissioner Rowe** replied that **Mr. Alke** correctly described Montana law regarding acquisition adjustments but the reality was that if a sales price was substantially above the book value, there were only three ways in which this money could be made up: with efficiencies; through raising rates, or inferior service. He claimed that the PSC has always strived to pick an acceptable purchaser and the fact that, as in **Mr. Alke's** example, the purchaser of the regulated property was an unregulated entity made for a stronger argument in favor of appropriate review because after the transaction closes, the purchaser has no other recourse. **SEN. STONINGTON** wondered whether 180 days were appropriate, and **Commissioner Rowe** assured her that while the PSC tried to work within a reasonable time line, six to nine months seemed more reasonable. He admitted that while delays could have unforeseen and negative consequences, it was also true that any number of agencies such as FERC, the SEC or FCC could be conducting their own reviews at the same time, and he could not fathom that the state commission review would be the one holding up the process. **SEN. STONINGTON** asked if there was room for common ground between this bill's approach and **Mr. Alke's**.

**Commissioner Rowe** replied he had not studied the latter but knew SB 234 was based on statutes which were working well in surrounding states. In his view, a number of the proposed amendments fit very well with his request for constructive suggestions and alternatives while **Mr. Alke's** were the most radical compared with what the sponsor had in mind.

**SEN. KEN TOOLE, SD 27, HELENA**, remembered there had been litigation about the PSC's jurisdiction over the transfer of assets. **Commissioner Rowe** mentioned that in every case, the utility started by challenging commission jurisdiction. He explained that in the Flathead case, they had gone to District Court to obtain a 30 day time span in which to do a minor review which resulted in consumer benefits, but a year later the review was deemed invalid. **SEN. TOOLE** tried to ascertain that the court had conveyed jurisdiction to the PSC, and **Commissioner Rowe**



explained they had reached an agreement which the court approved and supervised. **SEN. TOOLE** recalled with regard to the transfer to NorthWestern, arguments were raised by both Montana Power and NorthWestern Energy that the PSC did not have jurisdiction over stock transfers, and **Commissioner Rowe** confirmed that. **SEN. TOOLE** asked how the controversy was resolved. **Commissioner Rowe** replied that it did go through a commission hearing and ultimately, the commission asserted its jurisdiction. He felt SB 234 would clarify this issue.

**SEN. MIKE TAYLOR, SD 37, PROCTOR,** asked **Commissioner Rowe** to comment on the MDU amendment, and the latter professed that he could not at this time but had asked the involved parties to meet in order to come up with acceptable alternatives.

**CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS,** asked **Commissioner Rowe** how all of this related to the decision made last week by the PSC regarding NorthWestern's credit application. **Commissioner Rowe** explained that Montana's utility law differed from most other states as Montana does not have the general authority to adopt affiliate interest rules or to review transactions, and these two issues came together last week. The goal was to protect the utility company and to avoid shifting risk from the non-utility onto the utility operations. In both the sale of MPC to NorthWestern and the previous week's action, the argument was made that if action was not taken quickly, the non-utility operations could jeopardize the utility operations. He recalled how the PSC had determined that NorthWestern's acquisition met a minimal standard and the transaction was viable, and he stressed that now, the utility operation was indeed profitable and it was the non-utility which was close to bringing down the rest of the company. He affirmed that the previous week's PSC order was the toughest order on a financing request they had ever issued, but it had been necessary to reach further because the utility operations themselves were at stake. **CHAIRMAN JOHNSON** wondered if the assets of the former MPC were part of the full corporation or merely a division of NorthWestern and not responsible for NorthWestern Resources problem. **Commissioner Rowe** replied the company was originally organized as a utility affiliate which was then brought in as a unitary operation. **CHAIRMAN JOHNSON** probed further by asking whether the PSC understood, before making its decision, that the utility was part of NorthWestern's assets, and **Commissioner Rowe** replied they did.

**SEN. GARY PERRY, SD 16, MANHATTAN,** pointed to EXHIBIT (8) where it states "this commission does not have authority over transfers and sales of utilities" and asked for an explanation.

**Commissioner Rowe** affirmed that in 1948 when the statement was made, reviews were not in the commission's purview but

experience had demonstrated a failure to review these transactions could produce serious consequences for customers. More recently, it has been the PSC's position that transactions affecting the customers' rates and service should be reviewed based on the Legislature's mandate that rates and service are the commission's responsibility.

**SEN. COREY STAPLETON, SD 10, BILLINGS,** asked for an example of a transaction where the outcome would have been different had this bill been law. **Commissioner Rowe** pointed to the PacifiCorp transaction as the most poignant; also, the PSC's ability to do a rigorous review was affected in the MPC/NorthWestern transaction because of the pressure of potential consequences. He repeated it was up to the Legislature to clarify the commission's authority. **SEN. STAPLETON** then asked him to elaborate what he wished would have happened with the PacifiCorp transaction as opposed to what actually happened. **Commissioner Rowe** explained that the commission was not able to adequately review due diligence and the relationship between the sale price and the value of the assets, and he claimed that the commission would have been able to ensure the property was as represented had it performed a proper review.

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**SEN. STAPLETON** wanted to know the sale price for PacifiCorp, and also what the commission thought it should have been.

**Commissioner Rowe** recalled the price was somewhere below \$60 million and professed he did not have an opinion on what the price should have been, particularly since they were not afforded the opportunity to review. **SEN. STAPLETON** wondered, given the PSC's ability to disapprove the deal, how it could have gone forward without being sure about a proper price. **Commissioner Rowe** claimed that was the intent behind the bill's language, referring to "modify or condition a transaction"; typically, the Consumer Council would do discovery, testimony, and negotiating with the parties to make appropriate adjustments allowing a transaction to go forward in such a way as not to jeopardize the purchaser or its customers.

**SEN. BOB STORY, SD 12, PARK CITY,** asked if the PSC could prevent a regulated utility from making a sale to a cooperative.

**Commissioner Rowe** replied they would approve the transaction if they thought the sale was in the public interest because after the transfer, the customer would not be able to go to the commission with regard to rate and service issues. **SEN. STORY** wanted to know what the seller's option was if the PSC found the sale was not in the public's interest. **Commissioner Rowe** answered that realistically, a transaction is modified so rates and service will not be harmed. It would be rare for a transaction to be disapproved outright. **SEN. STORY** wondered if

the PSC then was not applying its regulatory power to the co-op in a roundabout way. **Commissioner Rowe** replied the intent was to ensure the co-op was starting from a good, solid position and added that the commission had reviewed transactions between regulated and unregulated entities by request. **SEN. STORY** asked where the line should be drawn with regard to the reviews as someone had implied the PSC could review the sale of an old service truck and other insignificant equipment. **Commissioner Rowe** replied SB 234 clarified what the Commission's authority is, as in the wording "transactions that would materially affect rates for services". As for the service truck, he could only conceive its sale being reviewed if the Consumer Council raised a question whether it was part of a revenue requirement. He was, however, intrigued by the idea of a minimum dollar threshold even though a million dollar contract could be huge for some companies and pocket change for others.

**SEN. PERRY** asked whether the PSC already had the authority to review transactions and acquisitions or did SB 234 vest a brand-new authority in the commission. **Commissioner Rowe** replied that in their view, it may conduct reviews under its general supervisory powers, and he looked to the Legislature to solve this contested issue. **SEN. PERRY** wondered if he understood correctly that the PSC had little to do in the crafting of SB 234. **Commissioner Rowe** explained that **Sen. Cobb** had taken the initiative, the PSC did not ask for this bill even though they might be responsible for causing some of the problems by having suggested the language concerning "modify or condition". He then asked for permission to give a third example to **SEN. STAPLETON** regarding an earlier question, namely that the restructuring law specifically prohibited the commission from either requiring or prohibiting the sale of generating assets which, in the case of Montana Power's sale of generators to NorthWestern Energy, raised concerns about potentially creating a monopoly.

**SEN. PERRY** sought assurance that he understood **Mr. Alke's** statement that the PSC wanted the authority granted to them in SB 234, and **Mr. Alke** repeated if the commission's true concern was to make sure an unqualified buyer who might jeopardize the utility's ability to provide just and reasonable rates and service did not acquire a Montana utility, then they should go with the bill he proposed because it specifically narrowed the PSC's authority to just the regulated operations of a utility. He repeated the term "public utility" in SB 234 refers to the company as a whole, and while MDU is a public utility as defined by Montana law, only 12% of the entire company is a utility and thus the PSC should not be able to assert any power beyond the utility operations.

**SEN. TOOLE** asked for clarification of the terms "acquisition adjustment" and "original cost appreciated". **Mr. Alke** explained that the original cost of the company which devoted property to public service becomes the basis of rate calculations and not what the purchasing company paid for it, even if the purchase price was higher than the base value; the difference between the seller's rate base and the purchasing price is called acquisition adjustment. **SEN. TOOLE** wondered if, under either bill, the PSC could step in under the provision pertaining to "reasonable and just rates" if a utility was to sell its generating assets. **Mr. Alke** replied this would not be covered under either bill because the restructuring law does not allow the PSC to prohibit such a sale. **SEN. TOOLE** changed his question to the potential sale of distribution assets. **Mr. Alke** explained his bill draft empowered the commission to disapprove a sale if the buyer was not qualified, either because he was not financially capable or because of a bad history. He went on to say the commission sets the rates both for the buying and the selling utility, and a higher purchase price cannot be reflected in rates unless an extraordinary showing is made by the buyer.

**SEN. STORY** asked whether the commission had no say in the Flathead example, where a regulated utility sold into an unregulated market. **Mr. Alke** confirmed this. **SEN. STORY** touched on the affiliated interest issue and asked how his bill draft would protect the ratepayer should the buyer get involved in such a diverse company and there was a downturn in the market. **Mr. Alke** answered neither bill would be able to successfully deal with potential mismanagement on the part of the utility in their effort to diversify.

**CHAIRMAN JOHNSON** referred to Section (1) of **Mr. Alke's** proposed bill and asked what "substantial credible evidence" meant. **Mr. Alke** explained the commission could not base its ruling on speculation but had to have solid evidence to support a determination that either the buyer was unqualified or the transaction would adversely affect the ratepayers' interests. **CHAIRMAN JOHNSON** assumed that the only recourse left after the PSC's decision was an appeal to the court, which **Mr. Alke** confirmed.

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**SEN. STONINGTON** sought to ascertain that **Mr. Alke's** intention was to tie the commission's authority specifically to just and reasonable rates and public interest as defined in statute. **Mr. Alke** replied he wanted to limit their review to the matters which they regulate and tie it to the just and reasonable rates. **SEN. STONINGTON** felt there was common ground between **Commissioner Rowe**

and **Mr. Alke** in the "due diligence" issue because in her opinion, the former had said "due diligence" meant the sale was as presented, whereas the latter thought it meant the company was qualified financially and capable of providing service. **Mr. Alke** charged that the PSC should only look at the purchase price from a rate making standpoint, namely if it was so high as to jeopardize the interest of the customer.

**SEN. STONINGTON** expressed hope that all parties concerned would sit down and come to some consensus because she felt the members were interested in the PSC conducting reviews. **Mr. Alke** explained that his bill draft was the result of a conversation with **Commissioner Rowe** who had asked him to prepare a proposal he could accept since he could not support the bill at hand, and he stated whatever the committee ultimately came up with would have to look a lot like his bill draft or he could not support it.

**CHAIRMAN JOHNSON** asked for clarification of a statement made by **Mr. Fitzpatrick** who then repeated his stance that in a regulated environment, the PSC's function was to balance public interest with business interest, and this bill overreached by getting into areas which should be left up to the companies managers and shareholders. **CHAIRMAN JOHNSON** wondered if it would have been in the public's best interest had the PSC stopped MPC's sale to NorthWestern Energy. **Mr. Fitzpatrick** replied several different transactions had taken place, and the PSC did play a role in three of the five. With regard to the transfer of the gas and electric distribution and transmission systems, TouchAmerica Holdings Company had the desire to get out of the electric utility business and the transfer was a proper management decision by the two parties. He speculated any company tied to TouchAmerica might now be involved in bankruptcy proceedings had the sale not taken place. **CHAIRMAN JOHNSON** remembered, though, that at the time, MPC had assured everyone TouchAmerica's evident problems would not affect their assets. **Mr. Fitzpatrick** could not comment since he had not been in their employ.

**SEN. TOOLE** reminded the committee that NorthWestern's purchase price was above the book value. **Mr. Fitzpatrick** charged that the difference was small; the big issue was stranded costs. **SEN. TOOLE** corrected him, saying that they did pay more and it was ultimately reflected in higher rates. He suggested the company explain this in a letter to the committee, and **Mr. Fitzpatrick** promised he would get an answer from the corporation. However, he disputed the fact that the price difference was reflected in rates; the rate increase happened with the gas and oil sale involving Pan Canadian because the price in that transaction was substantially above the book value.

**Closing by Sponsor:**

**SEN. COBB** closed by saying this legislation was current law in 45 other states, and the bill was necessary in order to clarify and put in statute what the PSC was already asserting.

**EXECUTIVE ACTION ON SB 173**

**Motion/Vote:** **SEN. RYAN** moved that **SB 173 DO PASS. Motion carried unanimously.**

**EXECUTIVE ACTION ON SB 215**

**Motion/Vote:** **SEN. TOOLE** moved that **SB 215 BE INDEFINITELY POSTPONED.**

**Substitute Motion/Vote:** **SEN. STAPLETON** made a substitute motion that **SB 215 DO NOT PASS. Substitute motion carried unanimously.**

**EXECUTIVE ACTION ON SB 219**

**Motion:** **SEN. TOOLE** moved that **SB 219 DO PASS.**

**Discussion:**

**SEN. STORY** stated he could not support a do pass because historically, the Legislature had avoided regulating co-ops; he understood that most of them already had net-metering programs and should decide for themselves on how to handle this issue.

**SEN. McNUTT** agreed with **SEN. STORY**, saying that historically, they had been allowed to conduct their own business, and he could not support changing the rules at this point.

**Substitute Motion/Vote:** **SEN. STORY** made a substitute motion that **SB 219 BE INDEFINITELY POSTPONED. Substitute motion carried unanimously.**

**ADJOURNMENT**

Adjournment: 5:30 P.M.

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SEN. ROYAL JOHNSON, Chairman

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MARION MOOD, Secretary

RJ/MM

**EXHIBIT (ens18aad)**